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SEP 8 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 643

ROBERT ALEXANDER, *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI
To The
UNITED STATES COURT OF CLAIMS

ROBERT ALEXANDER
pro se
P. O. Box 774
Lexington, Virginia 24450

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PETITION FOR A WRIT OF CERTIORARI
To The
UNITED STATES COURT OF CLAIMS

Your Petitioner, Robert Alexander, prays that a writ of certiorari issue to the United States Court of Claims to VACATE its ORDERS dated 1 May 1970 and 15 July 1970, dismissing my petition 392-69, and for the Court of Claims to hold hearing with testimony, under the provisions of FRCP 60: fraud, misrepresentation, and misconduct, in the matter of counsel for defendant securing the summary judgment 148 Ct. Cl. 24, in the prior case 295-58, by means of a *false* affidavit and other malpractice, in a fraud on a court.

In this instance, counsel for defendant is the Civil Division of the Department of Justice, representing the Government of the United States in the courts for the enforcement of law.

The Civil Division is composed of attorneys and counselors, who should be governed by the general rule:

> "I . . . do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of the court, uprightly, and according to law . . ."

OPINIONS BELOW

The summary judgment Case 295-58, is reported as 148 Ct. Cl. 24.

Not yet reported, and printed as Appendix A, infra, , are:

1. Court of Claims ORDER, dated 1 May 1970, dismissing, without Oral Argument, my petition No. 392-69, to relieve me of the summary judgment 148 Ct. Cl. 24, under the Court's powers lodged in Rule 152(b), FRCP 60: "fraud, misrepresentation, and other misconduct by an adverse party"; and for the Court to rehear, with testimony, for a Correction of Judgment; as in the prior Case 295-58, counsel for defendant, by means of a *false* affidavit, misled the Court of Claims into false impressions and errors of fact, as incorporated in the summary judgment 148 Ct. Cl. 24.

2. The mechanics of defendant's *false affidavit.*

3. The Civil Division's obstruction of the due process of appeal.

4. Court of Claims ORDER dated 15 July 1970, by which plaintiff's motion to VACATE Court of Claims ORDER dated 1 May 1970, is denied.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Is the Civil Division of a Department of Justice, representing the Government of the United States, for the enforcement of law in the pertinent courts, free to perpetrate a "fraud on a court", as set forth in FRCP Rule 60, in the matter of a *false* affidavit, used to secure the summary judgment 148 Ct. Cl. 24, and thereafter, avoid a court's scrutiny in hearing with testimony, under the pleas of *-res judicata,* and "not timely".

Case 295-58, 148 Ct. Cl. 24

Your Petitioner, Robert Alexander, a professional engineer, with extensive foreign and domestic management experience, was offered and accepted Foreign Operations Administration (FOA), and successors, unlimited term FOA-3 appointment and employment, traveled to Iran, with my wife, and personal automobile, by official orders, and took up my FOA employment on 1 October 1953, as Chief, Power and Utilities (Hydraulics), United States Operations Mission for Iran, Foreign Operations Administration. The FOA being an independent agency apart from the Department of State.

I was dismissed from my FOA appointment and employment, in Tehran, Iran, on or about 15 March 1954, by means of a Department of State *false* affidavit, antedated six months, merged with and concealed behind a *true* affidavit. Defendant's Exhibit 4.

I was dismissed from my FOA employment, by means of this Department of State *false* affidavit, for

opposing in Iran, and later in Hearings by Congress: ". . . Officials defending by highly questionable means indefensible performances . . ." in their conduct of United States Aid Operations in Iran. Exhibit 16, 392-69—H.R. No. 10, 85th Congress, pages 3, 5, 54-59.

These officials had, as determined and reported by Congress:

a. In Operations: Secured funds by false pretenses, expended funds on false based projects, and confused the accounts, in a slipshod and freewheeling manner, without regard to prudent management, in the matter of over a quarter billion dollars in less than four years, as publicly known in Iran.

b. In Hearings, these officials had resorted to: Perjury, misrepresentation, and false reports.

The damages to me from dismissal, without charges and hearing, security charge, and black-listing as disloyal, uncooperative, and unsuitable for employment, were so massive, that I was forced to bring suit in the Court of Claims, to in some measure recover for the damage done me. ". . . criticism by any individual of the fiscal laxity and freewheeling nature of the operations resulted in removal of such an inharmonious person . . ." Exhibit 16, page 54, par. 1, Ct. Cl. 392-69.

The point-at-issue, Case 295-58, was:

> "This is a suit on a continuing claim for salary which plaintiff alleges is due because of a wrongful separation from his employment by the . . . Foreign Operations Administration (FOA), and now International Cooperation Administration (ICA)."

The Court of Claims dismissed my petition for compensation, as without merit, having been misled by the Civil Division to conclude that:

> "There is no evidence of employment by that agency [FOA]."

The Civil Division had misled the Court of Claims into false impressions and errors of fact, as incorporated in 148 Ct. Cl. 24, by inducing the Court of Claims, in a fraud on a court, to accept defendant's *false* affidavit as a *true* affidavit.

I had placed in the record of Case 295-58 prima-facie evidence of employment by the FOA, and my dismissal by a *false* affidavit, and a list of personnel, controlled by defendant, having first hand participation or knowledge of official record tampering, and the issue of this *false* affidavit.

However, no trial on the merits of my claim was ever held. No hearing was ever held. No testimony was ever taken, though I requested hearing with adverse witnesses and testimony.

The mechanics of defendant's *false* affidavit, certified by counsel, the Civil Division, as a *true* affidavit, are printed as item 2, Appendix A, infra.

Civil Division's Obstruction of the Due Process of Appeal

Against the odds of suppressive secrecy, evasion, improper classification, intimidated witnesses, and altered official records, I could not assemble confirming proof, within the term of 295-58, that the Civil Division had obtained the summary judgment 148 Ct. Cl. 24, with a *false* affidavit.

Therefore, when I did piece together this confirming evidence, the 88th Congress, in hearing, established the

merit, equity, and justice of my claim, the miscarriage of justice in 148 Ct. Cl. 24, and that the Civil Division had misled the Court of Claims into the erroneous summary judgment 148 Ct. Cl. 24 with a *false* affidavit and other malpractice in a fraud on a court.

The 88th Congress enacted H.R. 4505, to bar the Civil Division's pleas of "not timely" and *res judicata*, and extend the period for me to submit confirming evidence to the Court of Claims of the Civil Division's fraud on a court with a *false* affidavit.

The Civil Division, to shield itself from scrutiny by a court in a trial with testimony, obstructed the due process of appeal, by misleading the President of the United States into signing a *false* based Memorandum of Disapproval, to veto the enacted H.R. 4505, 88th Congress.

In its *false* based Memorandum of Disapproval, the Civil Division admits that, during the term of Court of Claims Case 295-58, the Civil Division had in its possession the documentary evidence that defendant's Exhibit 4, in the Part II, is a *false* affidavit.

The text of the Civil Division's false based Memorandum of Disapproval, signed by the President of the United States, in error, to veto H.R. 4505, 88th Congress, and unwittingly be a party to the Civil Division's obstruction of the due process of appeal, is printed as item 3, Appendix A, infra.

Court of Claims Case 392-69

The 89th and 90th Congresses were willing to enact legislation to afford me access to the Court of Claims under the same terms and conditions as enacted, as

H.R. 4505, 88th Congress, but the Civil Division blocked enactment to protect their position.

The enactment of the Freedom of Information Act, 5 U.S.C. 552 gave me the power of call that the enacted H.R. 4505, 88th Congress, had provided for appeal under FRCP 60, "fraud, misrepresentation, and misconduct by an adverse party".

By use of this power of call I have assembled documentary evidence that defendant, the now Agency for International Development and the Department of State, violated all pertinent regulations to dismiss me from my FOA appointment and employment by means of altering the official records, and uttering a *false* affidavit, to the knowledge of, and approval by, defendant's counsels.

The documentary evidence of fraud on a court, with a *false* affidavit, and other misconduct and malpractice, by the Civil Division, Department of Justice, in Court of Claims Case 295-58, and the following obstruction of the due process of appeal, with false averments, and tricking of the President of the United States, to sign a veto message in error, have been placed before the Court of Claims by my petition 392-69.

The Court of Claims, in a summary procedure, without oral argument, hearing and the taking of testimony, has dismissed my petition 392-69, by ORDERS dated 1 May 1970 and 15 July 1970.

The Court of Claims has complied with the Civil Division, Department of Justice, pleas of "not timely" and *res judicata*.

Summary—295-58, 392-69

The Civil Division, Department of Justice, as counsel for defendant, in the prior Court of Claims Case 295-58, now admits in response to my Court of Claims petition 392-69 for rehearing of 295-58, that the Civil Division did obtain the summary judgment 148 Ct. Cl. 24 by means of a *false* affidavit, defendant's Exhibit 4, in the Part II.

The Civil Division further admits that the misrepresentation of this *false* affidavit as a *true* affidavit, was not inadvertent.

The Civil Division carefully omits in its pleas of "not timely" and *res judicata* its unconscionable conduct in obstructing the due process of appeal with false averments to degrade the President of the United States, with his signing a false based Memorandum of Disapproval supplied by the Civil Division.

CONCLUSION

In these circumstances of "fraud on a court" by the Civil Division, within the meaning of FRCP Rule 60, the Civil Division's pleas of *res judicata* and "not timely", are neither material, seemly, nor upright, in this instance, and it is respectfully submitted that this Petition for writ of certiorari should be granted.

The United States Court of Claims has been inconsistent in its interpretation of its Rule 152(b), as between my petition 392-69, and the Court's ruling in *Hagger Company* v. *The United States*, 130 Ct. Cl. 770.

Here the Court of Claims set aside its adverse decision of 4 March 1952, 121 Ct. Cl. 891, and on 8 February 1955, some three years later, disallowed counsel for defendant's plea of *res judicata*, and treated the Hag-

ger Company's petition No. 174-54 as an independent action within the meaning of the Court's then Rule 69, now Rule 152(b), based upon FRCP 60.

The Court of Claims concluded that it had been misled into false impressions and errors of fact by defendant's exhibit, which the Hagger Company had eventually been able to establish as in effect forged and fraudulent.

In setting aside the prior judgment, 121 Ct. Cl. 891, the Court stated:

> "If a plaintiff practices a fraud in the prosecution or proof of his case in our court, he forfeits his claim, no matter how meritorious his claim may otherwise have been, or how supererogatory may have been his attempted fraud." 130 Ct. Cl. 775, par. 2.

The extension of time from one year permitted by the Court's Rule for submission of newly discovered evidence, to the elapsed period of three years, was justified by the Court on the grounds that:

> "The rule also authorizes the court to set aside a judgment for any other reason justifying relief, and sets no time limit on the filing of a motion requesting that relief."

However, now in my Case 392-69, the Court of Claims has complied with the Civil Division, Department of Justice, pleas of "not timely" and *res judicata* with dismissal of my petition 392-69, without oral argument, in the matter of a "fraud on a court", by the Civil Division with a *false affidavit,* in the prior Case 295-58.

The Civil Division is well aware that in a hearing with testimony, its fraud on a court, with a *false affi-*

davit and other malpractice, will be established in the record.

It appears from Case 295-58 and 392-69, that the Civil Division, Department of Justice, representing the Government of the United States in the courts for the enforcement of regulations and law, is dedicated to winning cases and gaining convictions, rather than being fair and just in the exercise of its enormous power.

ROBERT ALEXANDER
pro se
P. O. Box 774,
Lexington, Virginia 24450

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 392-69

ROBERT ALEXANDER

v.

THE UNITED STATES

Before COWEN, Chief Judge, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON and NICHOLS, Judges.

Order

This case comes before the court on defendant's motion, filed February 2, 1970, for summary judgment. Upon consideration thereof, together with plaintiff's reply in opposition thereto, without oral argument, it is concluded that plaintiff is seeking to reopen the case decided against him in 1960 (Ct. Cl. No. 295-58, 148 Ct. Cl. 24); that his allegations of newly discovered evidence and fraud are without merit; and, that defendant is correct in its position that plaintiff's claim is both untimely and barred by *res judicata*.

An application under Rule 152(b) is untimely under that rule's own terms, except insofar as fraud on the court is adequately alleged, and the plaintiff has not even raised a triable issue of fraud on the court.

Treated as a new cause of action, the claim is clearly barred by limitations.

On the merits, the current claim is, in any event, barred by *res judicata* since plaintiff raises the same issues and points which he raised in the earlier case and presents no newly discovered evidence in the sense of Rule 152.

IT IS THEREFORE ORDERED that defendant's said motion for summary judgment be and the same is granted and plaintiff's petition is dismissed.

BY THE COURT

Chief Judge

May 1, 1970

Defendant's Exhibit 4, Ct. Cl. 295-58
Plaintiff's Exhibit 2, Ct. Cl. 392-69 Page 9a, 10a

Department of State "Dual" *Notification* of Personnel Action

1. "Notification of Personnel Action", Standard Form 50, is by U. S. Civil Service Commission, Federal Personnel Manual Chapter 295, the affidavit to the appointed employee, and others, that the stated terms and conditions of appointment and employment are as offered and accepted, on or before the date the *Notification* is *attested*, issued, and registered, to evidence a legal:

2. "Request for Personnel Action", Standard Form 52, which by U. S. Civil Service Commission, Federal Personnel Manual, Chapter 295, is the official record of the legal procedure for the appointment and employment of an individual, to include offer and acceptance of the terms and conditions of the appointment and employment, as stated.

3. By this Federal Personnel Manual criteria, which have the force of law:

(*Service v. Dulles*, 345 U.S. 162; *Watson v. U. S.*, 142 Ct. Cl. 749)

a. The Part I of Exhibit 4-2 is a true affidavit.

b. The Part II of Exhibit 4-2 is a *false* affidavit.

Part I: Separation—RIF [Separation misnomer for retired with ". . . compensation in accordance with Section 633 of the 1946 Foreign Service Act."]

4. Mr. Alexander's separation was in fact change in his status *FROM* Foreign Service Officer, FSO *Active* TO FSO *Retired*, as part of a Reduction-in-Force, which retired or separated some 170 other FSO's. Exhibits 9, 18, Ct. Cl. 392-69.

5. Mr. Alexander, a professional engineer, with extensive foreign and domestic management experience, was freed from the FSO active list COB 30 September 1953. Thereafter, the Department of State was limited to payment of Mr. Alexander's FSO annuity, and liquidation of his accrued leave time.

6. The Department of State, on and after 1 October 1953, relinquished any and all control over Mr. Alexander's assignment, employment, or movement elsewhere, without reservation or alternative. Exhibits 2*d*, 2*e*, 2*f*, 2*g*, 392-69.

7. The Foreign Operations Administration, an agency completely independent of the Department of State, with complete knowledge of Mr. Alexander's pending release from his FSO active status, on or about 15 August 1953, offered, and Mr. Alexander accepted, Foreign Operations Administration appointment and employment, effective 1 October 1953, to continue in his position and duties as Chief, Power and Utilities (Hydraulics), United States Operations Mission for Iran, Foreign Operations Administration, which position and duty Mr. Alexander had filled since February 1953. Exhibit 2*d*, 392-69.

Part II: Limited Term FSR (Foreign Service Reserve Officer) designation, Department of State. A *false* affidavit.

8. The Department of State and the Foreign Operations Administration, now Agency for International Development, between 19 February 1954 and 23 February 1954 executed a forged and fraudulent Department of State, Foreign Service United States of America, "Personnel Action Work Sheet", Form FS-353, equivalent to a Federal Personnel Manual Standard Form 52, to designate Mr. Alexander a limited term Department of State FSR, without his knowledge or consent, to illegally dismiss him from his FOA employment. Exhibits 19*a*, 19*b*, 19*c*, 392-69.

9. This forged and fraudulent Department of State Personnel Action Form, was then substituted in the record for Mr. Alexander's offered, accepted, and approved Foreign Operations Administration appointment of about 1 September 1953, for his FOA employment, effective 1 October 1953, into which he had entered on 1 October 1953. Exhibits 2*a*, 2*b*, 2*c*, Ct. Cl. 392-69.

10. On or about 1 March 1954, the Department of State, at the request of the Foreign Operations Administration, uttered the *false* affidavit, the Part II of Exhibit 4-2, and combined this *false* affidavit with an ante-date of six months, with the Part I, a *true* affidavit. The false affidavit being based upon the forged and fraudulent Personnel Action Form, Exhibit 2*b*, Ct. Cl. 392-69.

11. The *false* affidavit, the Part II, was combined with an ante-date of six months, with the Part I, to conceal an illegal action behind a legal act, to mislead into false impressions and errors of fact, as was done by counsel for defendant with the Court of Claims in Case 295-58, to secure the erroneous summary judgment 148 Ct. Cl. 24.

12. Receipt by Mr. Alexander of this *false* affidavit in Tehran, Iran, on or about 15 March 1954, in fact dismissed him from his Foreign Operations appointment and employment, by an *illegal* procedure and *false* affidavit.

13. Mr. Alexander was dismissed, without charges and hearing, for his opposing, first in Iran, and later in Hearings by Congress: ". . . Officials defending by highly questionable means indefensible performances . . .", in the conduct of United States Aid Operations in Iran, as set forth in Exhibit 15, 16, 17, Ct. Cl. 392-69.

14. These officials had, as reported by Congress:

> a. In Operations: Secured funds under false pretenses, expended funds on false based projects, and confused the accounts, in a slipshod and freewheeling manner, as publicly known in Iran; and

b. In Hearings resorted to: Perjury, misrepresentation, and false reports, all to the detriment of the United States and Iran.

15. ". . . criticism by any individual of the fiscal laxity and freewheeling nature of the operations resulted in the removal of such an inharmonious person . . ." Exhibit 16, page 54, par. 1, Ct. Cl. 392-69.

16. Mr. Alexander's suit, Ct. Cl. 295-58, was for his dismissal from the Foreign Operations Administration by illegal procedure with a *false* affidavit. As stated by the Court:

> "This is a suit on a continuing claim for salary which plaintiff alleges is due because of a wrongful separation from his employment by the . . . Foreign Operations Administration (FOA), and now International Cooperation Administration (ICA)."

17. The Court, misled by the Civil Division, with the *false* affidavit, the Part II, Exhibit 4-2, erroneously concluded that:

> "It was at the time [July-August 1953] . . . that he was offered and accepted an appointment in the Foreign Service Reserve [Department of State]." 148 Ct. Cl. 27, par. 2.

Mr. Alexander's Exhibit 2*a*, 392-69, states that there is no evidence in the record of offer to, or acceptance by, Mr. Alexander, at any time, of the Department of State forged and fradulent FSR designation, *attested* as legal and lawful on 1 October 1953, the Part II, Exhibit 4-2.

18. Further, the Court, misled by the Civil Division into accepting the *false* affidavit, the Part II, Exhibit 4-2, as a *true* affidavit, concluded that:

> "There is no evidence of employment by that agency [FOA]." 148 Ct. Cl. 26, par. 4.

Mr. Alexander's Exhibit *2d*, 392-69, states:

> "Mr. Alexander was in the U. S. when he received notification of his selection out [change in status FROM FSO active to FSO retired-inactive]. He returned to Tehran to accept a position with FOA."

19. This statement on the face of Exhibit 2*d*, establishes tha Mr. Alexander was appointed to a position with FOA, effective 1 October 1953.

SUMMARY

20. Mr. Alexander was a legally appointed FOA employee from on and after 1 October 1953, and then the FOA and Department of State between 19 February 1954 and 23 February 1954, executed the forged and fraudulent Exhibit 2*b*, 392-69, and substituted this illegal document in the record on or about 1 March 1954, for Mr. Alexander's legal appointment to FOA employment.

21. The Department of State then, on or about 1 March 1954, uttered the *false* affidavit, the Part II, Exhibit 4-2, to dismiss Mr. Alexander from his FOA appointment and employment, in an illegal procedure, without charges and hearing, for his opposition to the indefensible conduct of United States Aid Operations in Iran, all as known to now identified and listed adverse witnesses.

ADVERSE WITNESSES

Adverse witnesses having first hand participation, or knowledge, of the false affidavit, the Part II of defendant's Exhibit 4, Case 295-58, the violation of Regulations, in illegal procedure, malpractice in the court, and obstruction of the due process of appeal, as identified from my Exhibits, Case 295-58 and Case 392-69.

These adverse witnesses are listed in the May 1970 Department of State organization charts.

Adverse witness	*Exhibit reference 392-69*
John T. Forbes	19*a*, 2*d*, 2*a*, 2*b*, 2c, 2, 5
Edward W. Mulcahy	19*a*, 2, 2*a*, 2*b*, 2*c*, 2*d*
Eva A. McKay	19*a*
H(oward) P. Mace	2, 2*a*, 2*b*, 2*c*, 2*d*
Joseph W. Hughes	19*a*, 2, 2*b*, 2*c*, 2*d*, 7
R(obert) J(oseph) Ryan	2*e*, 2*f*, 2*g*, 2, 2*a*, 2*b*, 2*c*, 4
Thomas E. Naughton	2*h*, 2*i*, 8, 2*a*, 2*b*, 2*c*, 2*d*, 2
J. Edward Lyerly	2*a*, 2*b*, 2*c*, 2*d*, 2, 11*a*, 12, Veto H.R. 4505, 88th Congress,
Edward A. Dragon	2*a*, 2*b*, 2*c*, 2, letter dated 12 April 1968
Herbert E. Hoffman Department of Justice	11*b*, 12—Veto H.R. 4505, 88th Congress, letters dated 30 March 1964 and 21 July 1965

Defendant's Exhibit 4, 295-58. Exhibit 2

FORM FS 349
Rev. 8- 53

DEPARTMENT OF STATE
DIVISION OF FOREIGN SERVICE PERSONNEL Operations 1/

NOTIFICATION OF PERSONNEL ACTION

pvc

DATE: October 1, 1953
JOURNAL NO.: 38

(Last) (First) (Middle)	DATE OF BIRTH	SEX	LEGAL AUTHORITY
ALEXANDER Robert	Sep 29, 1900	Male	PL 724 - 79th

NATURE OF ACTION	EFFECTIVE DATE	DATE OF OATH
Separation - RIF Limited Appointment Under Sec. 522.1	COB September 30,1953 October 1, 1953	

	FROM	TO - 1/
FUNCTIONAL TITLE	Electrical Engineer	Electrical Engr
DIPLOMATIC OR CONSULAR TITLE	1st Sec'y - Consul	
POST	Tehran	Tehran
CLASS AND SALARY	FSO-3 $10,630	FSR-3 $10,630
APPROPRIATION ALLOTMENT	4A-2014	4A-2014
POSITION NUMBER		
NATURE OF EMPLOYMENT	PERM. X INDEF. LIM. TEMP. FULL X PART	PERM. INDEF. LIM. X TEMP. FULL X PART

REGULAR STAFF		LEGAL RESIDENCE	CITY	RETIREMENT DEDUCTIONS	FS
RESIDENT U.S. STAFF			STATE		C.S.
LOCAL NON-U.S.					FICA X
VETERAN		BRANCH OF SERVICE		MARITAL STATUS	Married
NON-VETERAN		MILITARY RESERVE STATUS	READY	CHILDREN	
			STAND-BY	DEPENDENTS	

ABOVE ACTION AND CONTINUANCE OF STATUS EFFECTED THEREBY ARE SUBJECT TO ALL APPLICABLE LAWS, RULES AND REGULATIONS. THE ACTION MAY BE CORRECTED OR CANCELLED IF NOT IN ACCORDANCE WITH ALL REQUIREMENTS.

REMARKS:

Separated through accelerated selection out program under Section 633 of the Foreign Service Act of 1946 effective COB September 30, 1953.

Mr. Alexander will no longer contribute to the Foreign Service Retirement and Disability Fund.

Appointment limited to the need for employee's services or June 30, 1954, whichever occurs first. Employee detailed to FOA; salary reimbursable by FOA.

Submit Form 61A.

1/ This attested Form FS-349 thrust upon Mr. Alexander in Tehran, Iran, on or about 15 March 1954. The Part II, "TO" section is a false affidavit. See over.

(Signature)

(Title)

1 EMPLOYEE COPY

Defendant's Exhibit 4, 295-58. Part I - Part II, Exhibit 2

FORM FS 349 Rev. 8- 53

DEPARTMENT OF STATE
DIVISION OF FOREIGN SERVICE PERSONNEL Operations Part I - pvc

DATE: October 1, 1953
JOURNAL NO. 38

NOTIFICATION OF PERSONNEL ACTION

(Last) (First) (Middle)	DATE OF BIRTH	SEX	LEGAL AUTHORITY
ALEXANDER Robert	Sep 29, 1900	Male	PL 724 - 79th

NATURE OF ACTION	EFFECTIVE DATE	DATE OF OATH
Part I - Separation 1/ - RIF	COB September 30,1953	
Part II-Limited Appointment Under Sec. 522.1	October 1, 1953	

	Part I - FROM	Part II - TO
FUNCTIONAL TITLE	Electrical Engineer	Electrical Engi[illegible] /Only legal entry here - Retired. See Exhibit 2d/
DIPLOMATIC OR CONSULAR TITLE	1st Sec'y - Consul	
POST	Tehran	Tehran
CLASS AND SALARY	FSO-3 $10,630	FSR-3 $10,630 1/
APPROPRIATION ALLOTMENT	4A-2014	4A-2014
POSITION NUMBER		
NATURE OF EMPLOYMENT	PERM. X / INDEF. / LIM. / TEMP. / FULL X / PART	PERM. / INDEF. / LIM. X / TEMP. / FULL X / PART
REGULAR STAFF		
RESIDENT U.S. STAFF		
LOCAL NON-U.S.		
VETERAN		
NON-VETERAN		

LEGAL RESIDENCE: CITY / STATE

BRANCH OF SERVICE

MILITARY RESERVE STATUS: READY / STAND-BY

RETIREMENT DEDUCTIONS: FS / C.S. / FICA X

MARITAL STATUS: Married

CHILDREN

DEPENDENTS

ABOVE ACTION AND CONTINUANCE OF STATUS EFFECTED THEREBY ARE SUBJECT TO ALL APPLICABLE LAWS, RULES AND REGULATIONS. THE ACTION MAY BE CORRECTED OR CANCELLED IF NOT IN ACCORDANCE WITH ALL REQUIREMENTS.

REMARKS:

Part I: Separated through accelerated selection out program under Section 633 of the Foreign Service Act of 1946 effective COB September 30, 1953. /Retired, with annuity, as desired and requested/

Mr. Alexander will no longer contribute to the Foreign Service Retirement and Disability Fund. /FSO annuity payable from 10/1/53/

Part II-Appointment limited to the need for employee's services or June 30, 1954, whichever occurs first. Employee detailed to FOA; salary reimbursable by FOA. 1/ Department of State limited FSR-3 forged and fraudulent substitution for FOA-3 appointment/ Part II

Submit Form 61A.

Part I : Legal, desired and requested, correctly dated and attested. See Exhibit 2d.

Part II : Department of State limited term FSR-3 designation forged and fraudulent. See Exhibits 2a, 2b, 2c. The Part II merged with the Part I, with an ante-date of six months, to mislead and conceal an illegal action behind a legal act. The Part II is a false affidavit.

(Signature) _____

(Title) _____

1/ Separation - Misrepresentation for FROM FSO active TO FSO retired.

1 EMPLOYEE COPY

Civil Division, Department of Justice

Obstruction

Due Process of Appeal

1. Against the odds of executive secrecy, evasion, improper classification, apprehensive witnesses scattered around the world, violations of regulations, and altered official records, Mr. Alexander could not assemble confirming proof that the Civil Division had obtained the summary judgment 148 Ct. Cl. 24 with a *false* affidavit and other malpractice, until after the term of Case 295-58 had expired.

2. Therefore, when Mr. Alexander did piece together this confirming proof, the 88th Congress, in hearing, established the merit, equity, and justice of Mr. Alexander's claim, the miscarriage of justice in 148 Ct. Cl. 24, and that the Civil Division had misled the Court of Claims into false impressions and errors of fact, by malpractice, with a *false* affidavit at the core.

3. The 88th Congress enacted H. R. 4505, to bar the Civil Division's pleas of "not timely" and *res judicata*, and extend the period for Mr. Alexander to submit confirming evidence to the Court of Claims of the Civil Division's fraud on a court, with a *false* affidavit.

4. The Civil Division to obstruct the due process of appeal, misled the President of the United States into signing a *falsely* stated Memorandum of Disapproval, to veto the enacted H. R. 4505, 88th Congress.

5. The Civil Division falsely averred in the Memorandum of Disapproval:

> "Mr. Alexander was selected out of the Foreign Service in 1953. In 1958, he brought suit in the Court of Claims for lost salary, alleging that his separation was invalid. On January 20, 1960, the Court concluded . . . that his claim had no merit."

The point-at-issue in Mr. Alexander's petition No. 295-58, was:

> "This is a suit on a continuing claim for salary which plaintiff alleges is due because of a wrongful separation from his employment by the . . . Foreign Operations Administration (FOA), and now International Cooperation Administration."

5. The Court of Claims, misled by the Civil Division, with a false affidavit, erroneously concluded that:

> "There is no evidence of employment by that agency [FOA]."

6. The Civil Division further stated in its falsely stated Memorandum that:

> "Mr. Alexander has had his day in court . . . While the circumstances of his case may have made it difficult at the time to obtain evidence, there is nothing in the record to indicate that diligent use of the court's facilities would have failed to obtain the evidence relating to the handling of his discharge which he now offers to establish."

7. The Civil Division thus admits that during the term of Case 295-58 the Civil Division had in its possession the documentary evidence that Mr. Alexander had been discharged from his FOA employment by illegal procedure, with a *false* affidavit, in violation of all pertinent regulations and law.

8. Further, the Civil Division also admits that Mr. Alexander's prima facie evidence in the record, did alert the Civil Division to all irregularities in procedure, but the Civil Division, being dedicated to gaining convictions, or winning cases, proceeded to mislead the Court of Claims into false impressions and errors of fact, as incorporated in the erroneous 148 Ct. Cl. 24, to obtain a tainted decision.

9. The documentary evidence that defendant's Exhibit 4, in the Part II, is a false affidavit, is now in the Court of Claims record, petition 392-69, obtained by Mr. Alexander with recourse to the Freedom of Information Act, 5 U. S. C. 552.

IMMEDIATE RELEASE December 31, 1963

Office of the White House Press Secretary Exhibit 12
(Austin , Texas)

THE WHITE HOUSE

MEMORANDUM OF DISAPPROVAL

/Written by Civil Division, Department of Justice/

I am withholding my approval from H. R. 4505, a bill to confer jurisdiction on the Court of Claims to entertain, hear, and determine a motion for a new trial on the claim of Robert Alexander.

1/ Mr. Alexander was selected out of the Foreign Service in 1953. In 1958, he brought suit in the Court of Claims for lost salary, alleging that his separation was invalid.[1] On January 20, 1960, the Court concluded, after considering all the evidence presented by Mr. Alexander, that his claim had no merit. His complaint was accordingly dismissed, and on April 16, 1960 his motion for rehearing was denied. He now seeks to obtain reconsideration of the Court's judgment against him on the basis of additional evidence. /Confirming evidence/

2/ Mr. Alexander has had his day in court.[2] The full facilities of a court for discovering and producing evidence were available to him. While the circumstances of his case may have made it difficult at the time to obtain evidence, there is nothing in the record to indicate that diligent use of the court's procedures would have failed to obtain the evidence relating to the handling of his discharge which he now offers to establish. 2/

3/ In these circumstances it is unnecessary to consider the relevance of the testimony offered. Mr. Alexander had a year after the Court's judgment within which to move to set it aside on the basis of newly discovered evidence, an opportunity which he failed to use. This period of grace has a definite limit because a court's judgment must become final at some point in time in order that all parties may conduct themselves thereafter in reliance upon it. 3/

4/ Unless such a judgment becomes final in circumstances which have prevented a litigant from taking advantage of opportunities for proof accorded to all alike, it should not be set aside. In the absence of such circumstances in Mr. Alexander's case, I am constrained to withhold approval from H.R. 4505. 4/

THE WHITE HOUSE (s) Lyndon B. Johnson
December 31, 1963 /Signed without review by Counsel to the President/

1/ False statement of point-at-issue in Case 295-58, Ct. Cl. 24, with admission by Civil Division of its possesion of evidence that Exhibit 4, Part II, is a false affidavit.

2/ Further admission that defendant's Exhibit 4, Part II, is a false affidavit.

3/ Civil Division's pleas of res judicata and "not timely to fraud on a court.

4/ Courts hold that a judgment obtained by a fraud on a court is not final until that fraud, with a false affidavit, is rectified. There is no time limit for appeal, and a Correction of Judgment. F R C P Rule 60.

IN THE UNITED STATES COURT OF CLAIMS

Cong.

10-60 ADLER CONSTRUCTION COMPANY, a partnership constituted of HAROLD C. ADLER and VERA L. ADLER, Partners.

142-67 MISSOURI PACIFIC RAILROAD COMPANY

371-68 WILLIAM D. JONES

364-69 "J" "C" LACKEY

392-69 ROBERT ALEXANDER

v.

THE UNITED STATES

Before COWEN, Chief Judge, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON and NICHOLS, Judges.

Order

These cases come before the court on motions for rehearing, to alter or amend judgment, for reconsideration and for further relief under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED this 15th day of July, 1970, that said motions be and the same are denied as follows:

Cong.

10-60 Adler Construction Company, a partnership constituted of Harold C. Adler and Vera A. Adler, Partners. Plaintiff's motion for a rehearing to alter or amend judgment.

142-67 Missouri Pacific Railroad Company. Defendant's motion for reconsideration or rehearing.

371-68 William D. Jones. Plaintiff's motion for reconsideration.

364-69 "J", "C" Lackey. Plaintiff's motion for reconsideration of the court's order dated April 3, 1970, dismissing the petition of the plaintiff.

392-69 Robert Alexander. Plaintiff's motion to rehear.

By the Court

Wilson Cowen
Chief Judge

SUPREME COURT, U. S.

No. 74

In the Supreme Court of the United States

OCTOBER TERM, 1974

ROBERT ALEXANDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

IRVING L. GERTZOG
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 643

ROBERT ALEXANDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioner instituted the present action in the Court of Claims on September 25, 1969, under that court's Rule 152(b), to obtain relief from the final judgment in *Robert Alexander* v. *United States*, 148 Ct. Cl. 24, on the grounds of fraud, misrepresentation or misconduct of an adverse party and of newly discovered evidence.[1] Petitioner alleged that the

[1] Rule 152(b) is virtually identical to Rule 60(b) of the Federal Rules of Civil Procedure and provides in pertinent part:

earlier judgment was based on a document (Pet. App. 9a) filed with the court by the United States (Def. Ex. 4, described by the court in 148 Ct. Cl. at 28) which petitioner, from information subsequently obtained pursuant to the Freedom of Information Act, 5 U.S.C. (Supp. V) 552, could prove was false.

The earlier case involved a suit by petitioner for salary allegedly due because of his wrongful discharge by the Technical Cooperation Administration, later the Foreign Operations Administration (148 Ct. Cl. at 25). In dismissing petitioner's claim, the court found that there was no evidence that petitioner had been employed by the FOA (*id.* at 26) and concluded that he had in fact been employed in the Foreign Service, from which he had been selected out in 1953 (*id.* at 28).[2]

On motion conforming to Rule 51 and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 151(c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; * * * The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. * * * This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. * * *

[2] Subsequent to the dismissal of his claim, petitioner attempted to obtain relief through a private bill in Congress. In 1963 Congress enacted H.R. 4505, which conferred juris-

The court granted the government's motion for summary judgment, holding that plaintiff had failed to raise "a triable issue of fraud on the court," that the motion under Rule 152(b) otherwise was untimely, and that, as a new action, the claim was barred by the statute of limitations and by *res judicata* (Pet. App. 1a).

2. The decision of the Court of Claims is correct. Under Rule 152(b), relief on the basis of fraud, other than fraud on the court, or newly discovered evidence is available "not more than 1 year after the judgment * * * was entered * * *." Since the earlier judgment in this case was entered in 1960, relief for petitioner has long been barred. *Ackermann* v. *United States*, 340 U.S. 193. There was, moreover, as the court pointed out, no evidence to support the allegations of fraud on the court (Pet. App. 1a).

Both the statute of limitations and *res judicata* barred an independent action. It was filed more than six years after the cause of action allegedly arose. 28 U.S.C. 2501. Petitioner made the same claim that the document was false in the earlier litigation (Pet. App. 1a).[3]

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diction on the Court of Claims to entertain, hear and determine anew petitioner's claim, if filed within three months after the bill's enactment (see H. Rep. No. 670, 88th Cong. 1st Sess.). The President vetoed this bill (Pet. App. 13a).

[3] Contrary to petitioner's assertion (Pet. 8-9), the decision below is not inconsistent with *Haggar Company* v. *United States*, 130 Ct. Cl. 770. In *Haggar* the court determined that defendant had misled it in a prior suit by giving false information and, therefore, treated plaintiff's suit as an inde-

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1970.

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pendent action based on fraud. Here, the court refused any relief because the petitioner failed to produce evidence from which a determination of fraud could be made.

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